

REMARKS

Claims 1-8 are pending in the application. While no claims are amended hereby, Applicant provides a listing of the claims purely for the convenience of the Examiner. Claims 1-2, 4, and 6 are rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 6,212,368 to Ramesh et al. ("Ramesh") in view of U.S. Patent No. 7,133,382 to Steudle ("Steudle") and further in view of U.S. Patent No. 6,799,026 to Scherzer et al. ("Scherzer"). Claim 3 stands rejected under 35 U.S.C. § 103(a) over Ramesh in view of Steudle and Scherzer and further in view of U.S. Patent No. 7,079,507 to Toskala et al. ("Toskala"). Claim 5 is rejected under 35 U.S.C. § 103(a) over Ramesh in view of Steudle and Scherzer and further in view of U.S. Patent No. 6,771,944 to Harano ("Harano"). Applicant traverses and respectfully requests reconsideration and withdrawal of the rejections thereto.

Applicant thanks the Examiner for the courtesies extended to the Applicant's representative during the telephonic interview of September 24, 2007. During the interview, Applicant pointed out that the Office Action's *Response to Arguments* pages 2-3 of the Office Action simply repeated the allegations of the prior Office Action, and cited no new sections from the prior art. The response in no way addressed the arguments made in Applicant's response dated August 9, 2007 (the August Response), the entirety of which is incorporated by reference herein. In short, and with all due respect, the Office Action's *Response to Arguments* quite simply ignored Applicant's August Response.

As explained in MPEP § 706.07 Final Rejection, "[W]here a single previous Office Action contains a complete statement of a ground of rejection, the final rejection may refer to such a statement and *also should include rebuttal of any arguments raised in the Applicant's reply*. (Emphasis added). As the section explains, "the Applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the Examiner to that end, and should not be prematurely cut off in the prosecution of his or her application. . . . The Examiner should never lose sight of the fact that in every case the Applicant is entitled to a full and fair hearing, and that a clear issue

between Applicant and Examiner should be developed, if possible before appeal.” Applicant respectfully urges that the Office Action has failed in its duty to include rebuttal to the arguments raised in Applicant’s August Reply, and thereby prematurely cuts off prosecution and denies the Applicant a full and fair hearing. Accordingly, Applicant respectfully respects withdrawal of the finality of the rejections in the present Office Action.

Turning to the Office Action’s response at pages 2-3, the Office Action reiterates its allegation that Ramesh teaches a wireless terminal device with at least two antennas, a single receiver, and a single level measuring section which, when combined with Steudle, “is capable of performing transmission and reception diversity without a break of communication.” Applicant disagrees, for the reasons amply set forth in the August Response. However, in an effort to advance prosecution, Applicant hereby further discusses the deficiencies of the Ramesh and Steudle disclosures.

Claims 1-2, 4, and 6-8 are rejected under § 103 over Ramesh in view of Steudle and further in view of Scherzer. Independent claim 1 recites that “the reception level measuring section measures at least one of the antenna’s reception level *except the receiving and/or transmitting antenna in the period of time.*” The “period of time” in this limitation refers to claim 1’s recitation that “the controller temporarily interrupts transmission and reception for a period of time without disconnection in data communication.” Accordingly, claim 1 requires that the reception level measuring section measures at least one of the antenna’s reception level except the receiving and/or transmitting antenna in the period of time in which transmission and reception is temporarily interrupted without disconnection and data communication. Ramesh, even when combined with Steudle, fail to teach or suggest this limitation.

The Office Action alleges that column 8, lines 30-40 and 51-67 as well as column 9, lines 1-9 show a measuring section which is capable of performing transmission and reception diversity without a break of communication. Applicant disagrees. To the contrary, as column 8 of Ramesh explains, before a first antenna switches to a second antenna to make strength indication measurements, the values of channel taps and positions on the signal received from the first antenna

have to be stored, and once the phone switches back to the first antenna, those channel taps are reloaded so signal reception can commence from that point. Thus, while the reception level is measured on Ramesh's second antenna, data communication is interrupted. As the Office Action admits at page 4, Ramesh does not teach interrupting transmission and reception for a period of time without disconnection and data communication. Steudle does not cure Ramesh's deficiency.

Column 1, lines 58-66 and column 3, line 20-32 of Steudle, cited by the Office Action, show a WCDMA system where transmission is interrupted by generating a frame in a gap during which transmission is interrupted. Yet as Steudle explains, Steudle uses this gap to perform parameter measurements for the purposes of handover in a one receiver mobile station. See column 1, lines 42-56 and column 2, lines 29-34, cited in part by the Office Action. In dual receiver mobile stations, Steudle explains that transmission and reception is maintained during measurement. *Id.* Thus Steudle only shows taking measurements of the same antenna on which transmission and reception is performed during the gap. Thus, Steudle does not show "the reception level measuring section measures at least one of the antenna's reception level except the receiving and/or transmitting in the period of time," as required by independent claim 1.

Accordingly, neither Ramesh nor Steudle, alone nor in combination, teach the reception level measuring section measures at least one of the antenna's reception level except the receiving and/or transmitting the antenna in the period of time where transmission and reception are temporarily interrupted without disconnection in data communication, as is required by independent claim 1. Accordingly, Applicant respectfully submits that independent claim 1 is presently in condition for allowance and urges reconsideration and withdrawal of the rejections thereto. As dependent claims 2, 4, and 6-8 ultimately depend from independent claim 1, and as nothing in Scherzer cures the deficiency of Ramesh and Steudle as applied to independent claim 1, Applicant urges that independent claims 1-2, 4, and 6-8 are presently in condition for allowance and respectfully requests reconsideration and withdrawal of the rejections thereto.

Claim 3 is rejected under § 103 over Ramesh and Steudle in view of Scherzer and further in view of Toskala. Claim 5 is rejected over Ramesh and Steudle further in view of Scherzer and

still further in view of Harano. Claims 3 and 5 each ultimately depend from independent claim 1. As in nothing in Toskala or Harano cure the deficiencies of Ramesh, Steudle and Scherzer as applied to independent claim 1, Applicant respectfully submits that dependent claims 3 and 5 are presently in condition for allowance and urges reconsideration and withdrawal of the rejections thereto.

In view of the above amendment, Applicant believes the pending application is in condition for allowance.

No fee is believed to be due for this Amendment. Should any fees be required, please charge such fees to Deposit Account No. 50-2215.

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Respectfully submitted,

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